

FILED

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CLERK OF SUPERIOR COURT
BY _____

LAW OFFICES OF THE
COCHISE COUNTY PUBLIC DEFENDER
P.O. BOX 1856
BISBEE, AZ 85603
STATE BAR RECORD NO. 00000500
TEL.: (520) 432-8440
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Xochitl Orozco
Deputy Public Defender
Attorney For Defendant

 **COPY**

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

STATE OF ARIZONA,	)	No. CR201800385
)	
Plaintiff,	)	RESPONSE TO STATE'S MOTION FOR
	)	ENTRY OF PROTECTIVE ORDER
VS.)	
)	
LUIS LAURO SIQUEIROS-	)	***Oral Argument Requested***
MEDINA,	)	(Hon. Wallace R. Hoggatt)
)	
Defendant.)	

The Defendant, Luis Lauro Siqueiros-Medina, by and through undersigned counsel, hereby responds to the State's Motion for Entry of Protective Order (hereinafter "Proposed Protective Order"). Mr. Siqueiros-Medina respectfully requests the motion be denied as overbroad, unconstitutionally burdensome on the Defendant and untimely.

This Response is supported by the attached memorandum of points and authorities.

RESPECTFULLY SUBMITTED this 24th day of July, 2018.

MARK A. SUAGEE
COCHISE COUNTY PUBLIC DEFENDER

By _____


Xochitl Orozco
Deputy Public Defender

MEMORANDUM OF POINTS AND AUTHORITIES

I. Facts and Procedural History

Mr. Siqueiros-Medina was arraigned on April 30, 2018. On June 5, 2018, undersigned counsel sent the first request for disclosure via email on June 5, 2018. [Appendix "App." 1] On June 11, counsel requested that if a request for protective order is to be filed, that a hearing not be set prior to July 2, 2018 so that counsel could respond after she returned from vacation and continuing legal education training. [App. 2] On June 27, 2018, counsel again followed up on the protective order. [App. 3] On July 6, 2018, counsel followed up again on the protective order. [App. 4] On July 18, 2018, the State filed a motion for protective order with a request for expedited consideration.

Trial in this matter is set for August 28, 2018. Undersigned counsel has not received a CD with 519 images, 3 digital images, 10 audio files, 2 video files, a CD with the forensic interview of one alleged victim and one CD with the forensic interview of another alleged victim. [App. 5] On the disclosure form, the State noted that the CDs were "being withheld pending ruling on Motion for Protective Order." [Id.] This disclosure was received by the Public Defender's Office on June 12, 2018, yet the motion was not filed for the protective order until July 18, 2018. [Id.]

The forensic interviews were conducted on April 11, 2018, four months ago. Undersigned counsel has no idea when the photos were taken, what the audio recordings are from, what the videos include nor what the digital images are of. Therefore, counsel cannot make follow up requests on disclosure it does not know about, does not know if there is outstanding material being withheld and cannot follow up on.

This motion for protective order is untimely, is unnecessary based on the Arizona Rules of Criminal Procedure, results in undue burden on the defense in preparation for trial and violates Mr. Siqueiros-Medina's Constitutional rights.

II. Law and Argument

The State seeks entry of a tailored protective order "because Rule 15.4(d) does not address or prohibit disclosures of confidential documents by non-attorneys." [Motion P.O. p.2] This is incorrect. Arizona Rule of Criminal Procedure 15.4(d) provides: "Any materials furnished to a party or counsel under Rule 15 *must not be disclosed to the public, and may be disclosed only to the extent necessary for the proper conduct of the case.*" (Emphasis added.)

To the extent there is a specific item that requires a protective order, the proper avenue is to file a request for a protective order pursuant to Arizona Rule of Criminal Procedure 15.5(c). In that process, the Court, after an *in camera* review, determines whether a protective order should be issued. If the Court determines that the material should not be disclosed under Rule 15, "the entire text of the material or information must be sealed and preserved in the record for appeal." Ariz. R. Crim. Pro. 15.5(d). The Court at that time can also order disclosure, defer the decision or issue a protective order as the title of the rule subsection describes: "A Court's Discretion to Deny, Defer or Regulate Disclosure." Ariz. R. Crim. Pro. 15.5(a).

a. The Proposed Protective Order is Overbroad and Precludes Effective Representation of Counsel.

The proposed protective order covers not only the protected material itself but also: "(1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material." [Motion P.O. p. 5] This means that if undersigned counsel desires to work on the material with an expert, have a conversation about

the protected material outside of the office for purposes of case research, or even use the office's record retention program, counsel must have the people privy to the information sign an "Acknowledgment and Agreement to be Bound." [Motion P.O. p. 9, 14]

The Acknowledgment and Agreement to be Bound requires the receiving party to "declare under penalty of perjury" that the party has read the entire protective order. [Motion P.O. p. 14] Furthermore, it provides that if the party does not comply with the protective order, the person could be subject to "sanctions and punishment in the nature of contempt." [*Id.*] The agreement even conveys jurisdiction to this Court "even if such enforcement proceedings occur after termination of this action." [*Id.*]

This agreement is overbroad. It conveys jurisdiction even after the statute of limitations has passed. This agreement would make it difficult, if not impossible, to obtain experts. Every day the Office of the Public Defender uses a record keeping and time management program entitled "Time Matters." Pursuant to 7.2(e), the vendor, LexisNexis, would have to sign the Agreement to be Bound. [Motion P.O. p. 9] The order further requires law enforcement to sign the agreement to be bound, subjecting law enforcement to criminal proceedings if they utilize information protected by the order to further their investigation. [*Id.*]

If the office decided to undertake a mock trial, every person involved would have to sign the Acknowledgment and Agreement to be Bound. [*Id.*] Counsel must be able to effectively prepare for a trial. Imposing a blanket protective order that is so broad as to include confidential trial preparation and work product of the office of the Public Defender prevents the effective representation each defendant is entitled to.

- b. *The Proposed Protective Order violates Mr. Siqueiros-Medina's rights of Confrontation and Due Process.*

The motion also requires counsel to obtain a separate agreement or order prior to using the protected material at trial. [Motion P.O. p. 5 § 3] Evidence prepared by the State and law enforcement for prosecution is subject to the Confrontation Clause. The United States Constitution guarantees a criminal defendant "a meaningful opportunity to present a complete defense" through the Due Process Clause of the Fourteenth Amendment and the Compulsory Process or Confrontation Clauses of the Sixth Amendment. *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006) (internal citations omitted). The Arizona Constitution further guarantees a criminal defendant the right to Due Process. Ariz. Const. Art. 2 § 4.

Mr. Siqueiros-Medina is a month before trial and has still not seen the forensic interviews that are the basis of the accusations against him. There is no way to speculate what follow up is necessary, what experts need to be contacted, what interviews need to be conducted and all of this must take place within a month. This is an overt denial of Due Process.

In addition, Mr. Siqueiros-Medina's right to Due Process and Confrontation supersedes any right the alleged victims possess to privacy when they are in direct contravention: "[W]hen the defendant's constitutional right to due process conflicts with the Victim's Bill of Rights in a direct manner, ... then due process is the superior right." *State ex rel. Romley v. Superior Court In & For Cty. of Maricopa*, 172 Ariz. 232, 236, 836 P.2d 445, 449 (App. 1992); see also *State v. Riggs*, 189 Ariz. 327, 330, 942 P.2d 1159, 1162 (1997) ("[I]f, in a given case, the victim's state constitutional rights conflict with a defendant's federal constitutional rights to due process and effective cross-examination, the victim's rights must yield."). The right to due process as guaranteed by the Arizona Constitution and the United States Constitution protect a criminal defendant's right to present a defense. Ariz. Const. art. 2 § 4, U.S. Const amend. V, XIV; *Chambers*

v. Mississippi, 410 U.S. 284, 294 (1973). The Due Process Clause is a fundamental right which “is spun from the thread of such fundamental principles as those guaranteeing the right of a criminal defendant to put the state's case to a meaningful adversarial test and to rebut each element of the charged offense with competent, credible, and relevant evidence.” *State v. Mott*, 187 Ariz. 536, 554, 931 P.2d 1046, 1064 (1997). “[D]enial of due process is a denial of fundamental fairness, shocking to a universal sense of justice.” *Romley*, 172 Ariz. at 236, 836 P.2d at 449.

- c. *Cochise County does not have the rules in place to allow materials to be filed under seal the way the Protective Order requires.*

Section 12.3 of the proposed order requires that any of the protected material, if the subject of the protective order, be filed under seal. [Motion P.O. p. 12] It requires counsel to “obtain a court order granting the Party the right to file the documents under seal.” [*Id.*] Cochise County has no local rules that allow for sealing of documents unlike Maricopa County which permits sealing of documents after a balancing test. Maricopa County Local Rule 2.19. Therefore, if a party wishes to have a document filed under seal, the Court applies “a balancing test to determine whether privacy, confidentiality, or the best interest of the state outweigh the policy in favor of disclosure.” *Griffis v. Pinal County*, 215 Ariz. 1, 5, ¶ 13, 156 P.3d 418, 422 (2007).

Section 12.3 takes this Court’s discretion to seal a document away from the Court and vests it in the party that designates material protected. Furthermore, the order requires this Court to grant leave to file a document under seal unless the Court is inclined to preclude a party from filing required motions.

- d. *Rulings by other trial courts in different cases is not precedent and should be disregarded.*

The Protective Order motion states that the proposed form of order “has been reviewed and approved by Presiding Judge Conlogue in another matter.” [Motion P.O. p. 2] Decisions by other

trial courts on different cases with different underlying facts are not relevant to the inquiry here. Judge Conlogue does not make binding precedent to this Court and should not be cited given that it is not precedential and the underlying facts and circumstances are different than those herein. See Arizona Rule of Supreme Court 111 (precluding citation to memorandum decisions from the Court of Appeals as precedential).

- e. *The motion for protective order lacks specificity and should be denied. If the Court determines that a protective order is necessary, the defense has supplied an alternate proposed form of order.*

The motion for protective order discusses forensic interviews, video of the alleged victims and medical records. However, it does not discuss the 519 photos, 3 digital images, or 10 audio files that the State has noted are being withheld pending ruling on this motion. [App. 5] The proper procedure is to list the specific items that the protective order should cover. Ariz. R. Crim. Pro. 15.5(a). Instead, the State is vesting the power to determine whether something should be protected in itself.

Attached to this motion as Appendix 6 is a proposed form of protective order for specific items that warrant such a protective order. If the Court determines that an order is appropriate, Mr. Siqueiros-Medina respectfully requests that the attached order be utilized in lieu of the State's overbroad proposed order.

III. Conclusion

The State's proposed protective order denies Mr. Siqueiros-Medina his rights to Due Process, Confrontation and, as a result, effective assistance of counsel. The order is untimely, overbroad, circumvents the rules of procedure already in place for these matters, and precludes Mr. Siqueiros-Medina from effectively preparing a defense.

RESPECTFULLY SUBMITTED this 24th day of July, 2018.

MARK A. SUAGEE
COCHISE COUNTY PUBLIC DEFENDER


By


Xochitl Orozco
Deputy Public Defender

Copy of the foregoing delivered this
24th day of July, 2018 to:

Hon. Wallace R. Hoggatt
Judge of the Superior Court
Bisbee, AZ 85603
via inter-office mail

Sara Ransom
Deputy County Attorney
Bisbee, AZ 85603
via inter-office mail



Appendix 1

Orozco, Xochitl

From: Orozco, Xochitl
Sent: Tuesday, June 05, 2018 9:13 AM
To: Ransom, Sara
Subject: Luis Siqueiros CR201800385

Good morning Sara,

I wanted to follow up on the disclosure on Luis Siqueiros. He had his arraignment on April 30, 2018. I still have not received any media on this case including his interview with police, the forensic interviews with the alleged victims and the interview with one of the alleged victim's mother, F.C.

Could you please follow up on this?

Thank you for your time,

Xochitl

Xochitl Orozco

Deputy Public Defender
Cochise County Public Defender's Office
4 Ledge Avenue, 3rd Floor
Administration Building
(Mailing address: P.O. Box 1856)
Bisbee, AZ 85603
520-432-8440 or 800-953-9263
520-432-8478 fax

Public Programs...Personal Service

www.cochise.az.gov

Appendix 2

Orozco, Xochitl

From: Orozco, Xochitl
Sent: Monday, June 11, 2018 8:40 AM
To: Ransom, Sara
Subject: RE: Luis Siqueiros CR201800385

Good morning Sara,
Sorry to hear about your hectic month, I understand completely. I am going on vacation for a week and then in the public defender conference next week. I will not be back until the 25th. If you want to file something in Siqueiros and have a hearing that is fine with me, just please don't set it before July 2 so that I have time to respond.
Thank you for your time,
Xochitl

From: Ransom, Sara
Sent: Friday, June 08, 2018 5:52 PM
To: Orozco, Xochitl <SOrozco@cochise.az.gov>
Subject: RE: Luis Siqueiros CR201800385

Xochitl,

I apologize—I had intended to bring up a PO with you, and I should have at least made sure the non-confidential documents went out in a supplemental disclosure. Its been a very hectic month. I will have additional documents out to you Monday. I imagine we will be fighting over the PO.

Sara

From: Orozco, Xochitl
Sent: Tuesday, June 5, 2018 9:13 AM
To: Ransom, Sara <SRansom@cochise.az.gov>
Subject: Luis Siqueiros CR201800385

Good morning Sara,
I wanted to follow up on the disclosure on Luis Siqueiros. He had his arraignment on April 30, 2018. I still have not received any media on this case including his interview with police, the forensic interviews with the alleged victims and the interview with one of the alleged victim's mother, F.C.
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Appendix 3

Orozco, Xochitl

From: Orozco, Xochitl
Sent: Wednesday, June 27, 2018 10:41 AM
To: Ransom, Sara
Subject: RE: Luis Siqueiros CR201800385

Good day Sara,

I wanted to follow up on the Siqueiros-Medina case. The disclosure states that the cds are being withheld pending ruling on the motion for protective order. I have not received a motion for protective order yet. You may have been holding on to the motion while I was gone. Let me know.

Thank you for your time,
Xochitl

From: Ransom, Sara
Sent: Monday, June 11, 2018 9:32 AM
To: Orozco, Xochitl <SOrozco@cochise.az.gov>
Subject: RE: Luis Siqueiros CR201800385

No problem, thanks

From: Orozco, Xochitl
Sent: Monday, June 11, 2018 8:40 AM
To: Ransom, Sara <SRansom@cochise.az.gov>
Subject: RE: Luis Siqueiros CR201800385

Good morning Sara,

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Xochitl

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To: Orozco, Xochitl <SOrozco@cochise.az.gov>
Subject: RE: Luis Siqueiros CR201800385

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Sara

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Sent: Tuesday, June 5, 2018 9:13 AM

To: Ransom, Sara <SRansom@cochise.az.gov>

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Xochitl

Xochitl Orozco

Deputy Public Defender

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Appendix 4

Orozco, Xochitl

From: Orozco, Xochitl
Sent: Friday, July 06, 2018 11:06 AM
To: Ransom, Sara
Subject: Luis Siqueiros CR201800385

Good day Sara,
I am following up on the email I sent June 27. Have you filed a motion for protective order in Siqueiros? The cds are something I need to look into soon.
Thank you for your time,
Xochitl

From: Orozco, Xochitl
Sent: Wednesday, June 27, 2018 10:41 AM
To: Ransom, Sara <SRansom@cochise.az.gov>
Subject: RE: Luis Siqueiros CR201800385

Good day Sara,
I wanted to follow up on the Siqueiros-Medina case. The disclosure states that the cds are being withheld pending ruling on the motion for protective order. I have not received a motion for protective order yet. You may have been holding on to the motion while I was gone. Let me know.
Thank you for your time,
Xochitl

From: Ransom, Sara
Sent: Monday, June 11, 2018 9:32 AM
To: Orozco, Xochitl <SOrozco@cochise.az.gov>
Subject: RE: Luis Siqueiros CR201800385

No problem, thanks

From: Orozco, Xochitl
Sent: Monday, June 11, 2018 8:40 AM
To: Ransom, Sara <SRansom@cochise.az.gov>
Subject: RE: Luis Siqueiros CR201800385

Good morning Sara,
Sorry to hear about your hectic month, I understand completely. I am going on vacation for a week and then in the public defender conference next week. I will not be back until the 25th. If you want to file something in Siqueiros and have a hearing that is fine with me, just please don't set it before July 2 so that I have time to respond.
Thank you for your time,
Xochitl

From: Ransom, Sara
Sent: Friday, June 08, 2018 5:52 PM
To: Orozco, Xochitl <SOrozco@cochise.az.gov>
Subject: RE: Luis Siqueiros CR201800385

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To: Ransom, Sara <SRansom@cochise.az.gov>
Subject: Luis Siqueiros CR201800385

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Could you please follow up on this?

Thank you for your time,

Xochitl

Xochitl Orozco

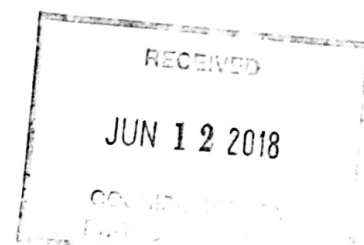
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Bisbee, AZ 85603
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Appendix 5

1 BRIAN M. McINTYRE, Cochise County Attorney
2 BY: SARA V. RANSOM, Deputy County Attorney
3 Arizona State Bar No. 024099
4 P.O. Drawer CA
5 Bisbee, Arizona 85603
6 (520) 432-8700
7 attymeo@cochise.az.gov



8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
9 IN AND FOR THE COUNTY OF COCHISE

10 STATE OF ARIZONA,)	
	)	NO. CR201800385
11 Plaintiff,)	
12 vs.)	
)	
13 LUIS LAURO SIQUEIROS-MEDINA,	)	STATE'S SUPPLEMENTAL
	)	DISCLOSURE # 1
14 Defendant.)	
)	

15 The Cochise County Attorney hereby supplements the previous disclosure
16 material and makes available to the Defense for examination and reproduction the following
17 supplemental disclosure material and information, which may be used as evidence in the case-in-
18 chief and as rebuttal evidence in the above-entitled case.

19 **ADDITIONAL ITEMS:**

20 **PAGES:**

21 Booking documents and Probable Cause Statement	14 – 21
22 Search Warrant No. SW201800024	22 – 40
23 CCSO Supp. #5, 18-12272, Det. Borquez	41
24 CCSO Supp. #4, 18-12272, Det. J.C. Hoke	42 – 44
25 CCSO Supp. #3, 18-12272, Deputy Larimer	45
CCSO Evidence Logs	46 – 49
CCSO Supp. #2, 18-12272, Sgt. Parker	50 – 53
CCSO Supp. #1, 18-12272, Deputy Tobolski	54
CCSO Officer Report, 18-12272	55 – 64
CD: Photo-519, Digital image-3, Audio-10, Video-2	65*
CD: 1119-1, Forensic Interview of E.G.	66*
CD: 1119-2, Forensic Interview of Y.G.	67*

26 ***These CDs are being withheld pending ruling on Motion For Protective Order.**

27 *If there are non-paper items they will be made available for copying, the*
28 *copying to be done by the defense. The copying will be done at the County Attorney's Office*

Appendix 6

LAW OFFICES OF THE
COCHISE COUNTY PUBLIC DEFENDER
P.O. BOX 1856
BISBEE, AZ 85603
STATE BAR RECORD NO. 00000500
TEL.: (520) 432-8440
FAX: (520) 432-8478
PDMEQ@COCHISE.AZ.GOV

Xochitl Orozco
Deputy Public Defender
Attorney For Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

STATE OF ARIZONA,	)	NO. CR201800385
PLAINTIFF,	)	ORDER
VS.)	
LUIS LAURO SIQUEIROS-	)	(Hon. Wallace R. Hoggatt)
MEDINA)	
DEFENDANT.)	

The Court having considered the motion and good cause appearing therefrom,
IT IS HEREBY ORDERED that the following item be protected under Arizona
Rule of Criminal Procedure 15.5:

This material shall only be used to the extent necessary for the proper conduct of the case and may not be disseminated to members of the public absent a court order. Persons involved in the case in the normal course of business, including but not limited to, the defendant, experts, witnesses, and court personnel shall not disseminate to the public absent a court order.

These materials shall be preserved for the record on appeal and/or post-conviction relief review and this order will follow that material.

DATED this _____ day of _____, 2018.

JUDGE OF THE SUPERIOR COURT

Copy of the foregoing delivered to:

Xochitl Orozco
Deputy Public Defender
Bisbee, AZ 85603
via inter-office mail

Sara Ransom
Deputy County Attorney
Bisbee, AZ 85603
via inter-office mail

_____ / _____